

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

<p>BILLY DEAN CARTER, BILL G. CARTER AND ESTATE OF SHIRLEY CARTER by and through BILL G. CARTER, Executor,</p> <p>Plaintiffs/Respondents,</p> <p>vs.</p> <p>JASON CARTER,</p> <p>Defendant/Petitioner.</p>	<p>LACV095809</p> <p>DEFENDANT’S MOTION TO TAKE JUDICIAL NOTICE OF RECORD AND TESTIMONY OF FECR029316</p>
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Defendant Jason Carter states as follows:

RELEVANT PROCEDURAL HISTORY

1. On December 15, 2017, Jason Carter was found responsible for the death of his mother, Shirley Carter in LACV095809.
2. On December 17, 2017, Jason Carter was charged with murder (FECR029316).
3. On May 30, 2018, in light of newly-discovered, previously-unavailable evidence, Jason Carter filed a Petition for Relief requesting vacation of judgment.
4. Hearing on the Petition to Vacate was held December 10-12, 2018.
5. On January 31, 2019, this Court denied and dismissed Jason Carter’s Petition to Vacate.
6. On February 6, 2019, Jason Carter filed a Motion to Enlarge or Amend Ruling, on the grounds that this Court did not make findings on specific issues central to the Petition to Vacate. Plaintiffs filed a resistance on February 19, 2019.
7. Trial in FECR029316 was held March 5 - 21, 2019.
8. The jury returned a unanimous finding of not guilty.

REQUEST TO TAKE JUDICIAL NOTICE

9. This Court has not yet ruled on Jason Carter’s Motion to Enlarge or Amend Ruling.

10. In addressing Jason Carter's Motion to Enlarge or Amend Ruling, Jason Carter requests that this Court take judicial notice of the adjudicative facts presented in the course of the criminal trial and corresponding written record pursuant to Iowa R. Civ. P. 5.201.

11. The criminal written record and oral testimony are facts judicially noticeable because they are generally known within this court's territorial jurisdiction and can be readily and accurately determined from sources whose accuracy cannot be reasonably questioned. Iowa R. Civ. P. 5.201(b)(1-2).

12. This request is timely because the Court may take judicial notice "at any stage of the proceeding." Iowa R. Civ. P. 5.201(d).

13. Jason Carter acknowledges Iowa courts have held that it is improper for a district court to consider to take judicial notice of the records of the same court in a different proceeding without an agreement of the parties. *See Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 311 (Iowa 1982)¹.

14. However, "in special circumstances exceptions to this rule have been formulated and applied." *See In Interest of Adkins*, 298 N.W.2d 273, 277 (Iowa 1980) (citing *Harms v. Bennett*, 130 N.W.2d 734, 736 (1964) (in habeas corpus action trial court may take judicial notice of its records in prior habeas corpus action); *Green v. State*, 528 S.W.2d 617, 618-19 (Ct. Crim. App. Texas 1975) (trial court in revocation took notice of evidence in underlying criminal case in the same court); 29 Am. Jur.2d Evidence § 59 (1967)).

15. In this case, Jason Carter is not asking that all testimony be admitted as true, but asks that the court view the potential testimony in future proceedings in addressing the Motion to Vactate / Motion for a New Trial.

16. In *Adkins*, the Iowa Supreme Court held that it was permissible for a trial court in a subsection 232.114(6) termination proceeding to judicially notice a prior CINA case, including

¹ In *Troester*, the Iowa Supreme Court held that it was improper for the district court to take judicial notice of the records of the same court in a different proceeding without an agreement of the parties; however, the reasons behind that ruling differ from the situation with which this Court is currently presented. In *Troester*, the Iowa Supreme Court made its ruling because "[t]he parties . . . had no opportunity to present their respective positions through an evidentiary hearing on matters contained in the [other proceeding]." *Id.* In stark contrast, the parties to this case have had a three-day evidentiary hearing in order to present their respective positions on the matters which were then thoroughly analyzed in Jason Carter's criminal trial.

the evidence, as long as certain safeguards were followed: “Papers requested to be noticed must be marked, identified, and made a part of the records. Testimony must be transcribed, properly certified, and made a part of the record. Trial court’s ruling . . . should state and describe what it is court is judicially noticing.” *Id.* at 277-78. Should this Court indicate it is inclined to judicially notice the record, testimony, and outcome of Jason Carter’s corresponding criminal case, Jason Carter will supply all these materials as soon as they are available to Jason Carter (e.g., the official court transcript).

17. Iowa courts may also take judicial notice of “a court in actions of collateral character, and especially where the object or purpose of the proceedings is to enforce a judgment or decree entered in the principal case.” *Haaren v. Mould*, 112 N.W. 921, 923 (Iowa 1909).

18. Jason Carter was found civilly liable for the death of his mother on December 15, 2017. County Attorney Ed Bull authorized his arrest just hours after the civil verdict was rendered. These two cases are based on the same underlying facts and allegations. They are inextricably intertwined.

19. Further, much of the criminal record focuses on the evidence presented to this Court in the Petition to Vacate. The record and outcome indicate that indeed, as Jason Carter postured during the hearing on the Petition to Vacate, had this evidence been available to the civil jury the outcome of the civil trial would have been different. To the extent that Plaintiffs may assert the burden of proof is different in civil proceedings, Jason Carter reminds the Court that the jury in the criminal matter reached a unanimous finding of not guilty after less than two hours of deliberation.

20. An additional factor this Court should consider is that the investigation into Shirley Carter’s murder was *ongoing as the criminal trial proceeded*. In the middle of trial, during the State’s case and even *after the State had rested*, Jason Carter’s attorneys received additional exculpatory evidence not available to Jason Carter in the civil trial or even in the Petition to Vacate. Jason Carter’s attorneys became aware during trial that as the jury sat weighing the evidence against Jason Carter, Marion County law enforcement officers were out following up on leads previously neglected (e.g., a lead from a tip left in 2016). This additional lack of follow-through and failure to adequately investigate the murder of Shirley Carter further supplements

Jason Carter's request for vacation of judgment in light of newly discovered evidence previously unavailable to him.

21. Given these facts, this Court may take judicial notice of the written record of the criminal case, the oral testimony offered in the course of trial, and the ultimate outcome of the trial.

WHEREFORE Jason Carter respectfully requests that this Court take judicial notice of the written record and testimony from corresponding criminal case FECR029316.

Respectfully submitted,

/s/ Alison F. Kanne

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CERTIFICATE OF SERVICE

This brief was served upon all parties to this action on March 26, 2019, by CM/ECF.

/s/ Alison F. Kanne